IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.367 of 2006
WITH
FIRST APPEAL Nos.368 to 384 of 2006
WITH
FIRST APPEAL Nos.386 to 387 of 2006
WITH
FIRST APPEAL Nos.395 to 396 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
&
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL. LAQ OFFICER - Appellant
Versus
PATEL AMRATBHAI NARANBHAI & ORS. - Respondents

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Appearance:
MR SS SHAH, GP for Appellant in First Appeal Nos.367 to 377 of 2006 **AND** MR SS PATEL, AGP for Appellants in First Appeal Nos.378 to 384 of 2006; 386, 387, 395 & 396 of 2006.

MR AJ Patel for the original claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 22/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Mr.S.S.Patel, learned Assistant Government Pleader for the appellant, states at the Bar that interest of the appellant and that of the respondent No.2 is identical and is not in conflict at all. In view of the statement made at the Bar, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission upon the respondent No.2. On the joint request of the learned advocates for the parties, the appeals are taken up for final disposal today.

2. By filing the instant appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant, i.e. the Special Land Acquisition Officer, Mehsana, has challenged legality

of common judgment and award dated August 18, 2004 rendered by the learned Civil Judge (S.D.), Mehsana, in Land Acquisition Reference No.2259 of 2003 to 2288 of 2003 by which the claimants are awarded in all compensation at the rate of Rs.28/- per square metre for their acquired lands.

3. The Executive Engineer, Roads & Buildings Division, Mehsana, proposed to the State Government to acquire lands of Village Charol, Taluka Kadi, District Mehsana, for public purpose of Sadra-Varkhadia Road. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Charol were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on May 28, 1995. The landowners were thereafter served with the notices as required by law. They objected to the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said

report, the State Government was satisfied that the lands of village Charol, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of Sadra-Varkhadia Road. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on August 5, 1995. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.100/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer awarded compensation to the claimants at the rate Rs.3.25/- per square metre for irrigated lands and Rs.2.15/- per square metre for non-irrigated lands. The claimants were of the opinion that the offer of the compensation made to them was thoroughly inadequate. Therefore, they submitted applications requiring the Special Land Acquisition to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly, the

references were made to the Reference Court where they were numbered as noticed earlier.

4. On behalf of the claimants, witness Govindbhai Chaturbhai Patel was examined at Exhibit 39. Over and above stating that the lands acquired were highly fertile and that the claimants were raising different crops in a year, it was asserted by him that each claimant was earning net profit of Rs.35,000/- to Rs.40,000/- per *vigha* per year from sale of agricultural produces. It was also mentioned by him that Kadi-Becharaji Road was passing through Village Charol and that his village was situated on the road connected to other villages such as Vekra, Khavad, Dharampur, etc. According to the said witness, village Kasva is situated near village Charol and that the lands of village Kasva were also acquired earlier and that the claimants of the said village were awarded compensation at the rate of Rs.28.70/- per square metre in Land Acquisition Reference Nos.271 of 1996 to 279 of 1996 with reference to publication of notification under Section 4 of the Act on July 6, 1992. The witness

produced previous award of the Reference Court relating to the lands of Village Kasva at Exhibit 35. It was also mentioned by the said witness that village Sedardi is also situated near his village Charol from where the lands were acquired in Land Acquisition Reference Nos.280 to 289 of 1996.It indicates that the Reference Court had awarded compensation at the rate of Rs.28.60/- per square metre to the claimants with reference to notification published under Section 4 of the Act on June 23, 1992. The witness produced previous award of the Reference Court relating to the lands of Village Sedardi at Exhibit 36. According to the said witness, the award of the Reference Court rendered with reference to lands of Village Sedardi was challenged by the acquiring authorities before the High Court by way of First Appeal Nos.1919 of 2001 to 1942 of 2001, which were dismissed on May 1, 2001. The witness produced a copy of the judgment of the High Court at Exhibit 37. What was maintained by the said witness was that village Maharajpura was situated near his village Charol and that the lands were also acquired from village Maharajpura. According to the said

witness, the Reference Court in Land Acquisition Reference Nos.3624 to 3636 of 2003 awarded compensation at the rate of Rs.28/- per square metre to the claimants, whose lands were acquired from village Maharajpura. The witness produced previous award of the Reference Court relating to the lands of Village Maharajpura at Exhibit 38. The witness asserted before the Reference Court that the fertility of the lands of village Charol, village Kasva, village Sedardi and village Maharajpura, was similar in all respects and that the lands were even. In support of his claim that the lands acquired were highly fertile, the witness further produced 7/12 extracts of the lands acquired at Exhibits 10 to 34.

This witness was cross-examined by the learned Government Pleader for the State. The suggestion made to the witness that the cultivation of crops was dependent upon rains, was emphatically denied by him. The suggestion made to the witness that the lands acquired were fellow and useless was also emphatically denied by him. The suggestion made to the witness that the lands of village Sedardi,

village Kasva, village Maharajpura were better than the lands of his village Charol, was emphatically denied by him.

5. On behalf of the acquiring body, witness Panda Chhatrasinh Patel was examined at Exhibit 41. The said witness mentioned in his testimony that the lands acquired were irrigated lands, but primary facilities were not available in the village. In cross-examination by the claimants, it was admitted by this witness that he was not present when the land acquisition proceedings were initiated nor he had seen the lands acquired. He had to admit that he had no personal knowledge regarding the award made by his predecessor in the office.

6. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous awards of the Reference Court relating to the lands of village Kasva produced at Exhibit 35; village Sedardi produced at Exh.36; and lands of village Maharajpura produced at Exhibit 38 were relevant and furnished good guidance for the

purpose of determination of market value of the lands acquired in the instant cases. The learned Judge of the Reference Court noticed that village Kasva, village Sedardi and village Maharajpura were adjacent to village Charol from which the acquisition of the lands in the instant cases, was made and, therefore, those awards were relevant for the purpose for determination of the market value of the lands acquired in the instant cases. After taking into consideration the amount awarded in those awards, the learned Judge of the Reference Court held that the average rate of compensation payable to the claimants reflected in those awards was Rs.28/- per square metre. In view of the abovereferredto findings, the learned Judge has awarded compensation at the rate of Rs.28/- per square metre to the claimants, giving rise to the above numbered appeals.

7. This Court has heard Mr.S.S.Shah, learned Government Pleader, and Mr.S.S.Patel, learned Assistant Government Pleader for the appellant, as well as Mr.A.J.Patel, learned counsel for the claimant/claimants in each appeal. This Court has

also considered the documentary evidence produced by the parties for perusal of this Court.

8. From the record of the case, it is evident that no sale instance was produced by the claimants in support of their claim for enhanced compensation nor compensation was claimed on yield basis. Under the circumstances, unsubstantiated assertion made by the witness for the claimants that each claimant was earning net profit of Rs.35,000=00 to Rs.40,000=00 per *vigha* per year, has no relevance at all. What was relied upon by the claimants for enhanced compensation was three previous awards of the Reference Court relating to the lands of village Kasva, village Sedardi and village Maharajpura. Exhibit 35 is the award of the Reference Court rendered in Land Acquisition Reference Nos.271 of 1996 to 279 of 1996 relating to the lands of village Kasva, Taluka Kadi, which were acquired for the public purpose of Narmada Canal pursuant to publication of notification under Section 4 of the Act on July 6, 1992. Therein the Land Acquisition Officer had awarded compensation at the rate of

Rs.2.70 per square metre for irrigated lands and Rs.1.80 per square metre for non-irrigated lands. Feeling aggrieved, the claimants had sought references and the Reference Court by judgment and award dated January 20, 2000, awarded the compensation to the claimants in all @ Rs.28.70 per square metre. Again, Exhibit 36, which is the judgment of the Reference Court rendered in Land Acquisition Reference Nos.280 to 289 of 1996 indicates that the lands of village Sedardi, Taluka Kadi, were acquired for the public purpose Narmada Canal pursuant to publication of notification under Section 4(1) of the Act on June 23, 1992. In the said cases, the Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.2.40 per square metre for irrigated lands and Rs.1.60/- per square metre for non-irrigated lands. Feeling aggrieved, the claimants had sought references and the Reference Court by award dated March 2, 2000 awarded the compensation to the claimants at the rate of Rs.26.70/- per square metre. Exhibit 37, which is the judgment of the High Court delivered in First Appeal Nos.1919 of 2001 to 1942 of 2001 indicates

that the award of the Reference Court rendered in Land Acquisition Reference Nos.280 of 1996 to 289 of 1996 relating to the lands of village Sedardi was challenged in the High Court and the said appeals were dismissed on May 1, 2001. Again, Exhibit 38, which is the previous award of the Reference Court rendered in Land Acquisition Reference Nos.3624 to 3636 of 2003 relating to the lands of village Maharajpura, makes it clear that the lands of village Maharajpura were acquired for the public purpose of R & B, pursuant to notification under Section 4(1) of the Act published in the year 1993. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.10/- per square metre. Feeling aggrieved, the claimants had sought references and the Reference Court, by judgment and award dated March 31, 2004, awarded compensation to the claimants at the rate of Rs.28/- per square metre.

9. The assertion made by witness Govindbhai Chaturbhai Patel that three villages namely, Kasva, Sedardi and Maharajpura, are situated near his

village Charol, could not be demonstrated to be untrue. The assertion made by the said witness that the lands of village Charol as well as the lands situated in village Kasva, village Sedardi, and village Maharajpura, were similar in all respects including the fertility, was not challenged on behalf of the appellant or acquiring body. In fact, the Reference Court has taken a pragmatic approach while fixing the compensation of the lands acquired in the instant cases. From the evidence adduced by the claimants, there is no manner of doubt that the lands acquired in the instant cases and the lands earlier acquired from villages Kasva, Sedardi and Maharajpura, were situated near each other. Therefore, they can be consolidated into one single unit with little to choose between one stretch of land and another. It may be mentioned that the entire area was in a stage of development and the different villages are capable of being developed in the same manner as the lands comprised in villages Kasva, Sedardi and Maharajpura were developed. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing

reliance on the previous awards of the Reference Courts relating to the lands of villages Kasva, Sedardi and Maharajpura, for the purpose of determination of the market value of the lands acquired in the instant cases. It is well settled that the previous award of the Reference Court relating to the lands acquired from adjacent village, which has attained finality, can always be relied upon for the purpose of determining the market value of the lands acquired subsequently from other village.

On over all view of the matter, this Court is satisfied that the learned Judge of the Reference Court has recorded correct findings of fact and applied correct principles of law to the proved facts while determining the just amount of compensation payable to the claimants. No ground is made out by the learned counsel for the appellant to interfere with the impugned judgment and award of the Reference Court. Therefore, the instant appeals, which lack merits, deserve to be dismissed.

10. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra